



FEDERAL ELECTION COMMISSION
Washington, DC 20463

VIA ELECTRONIC AND FIRST CLASS MAIL

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OCT 13 2017

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RE: MUR 7285
Worker's Voice and Elizabeth Shuler
in her official capacity as treasurer

Dear Mr. Gold and Ms. Shuler:

In the normal course of carrying out its supervisory responsibilities, the Federal Election Commission (the "Commission") became aware of information suggesting that your client, Workers' Voice and Elizabeth Shuler in her official capacity as treasurer, (the "Committee"), may have violated the Federal Election Campaign Act of 1971, as amended (the "Act"). At that time, our Office provided your client with copies of both referrals designated as RR 14L-34 and RR 16L-18. RR 14L-34 concerned the failure to timely file fourteen(14) 48-hour reports totaling \$92,044.23 to support four hundred fifty-seven (457) independent expenditures and one hundred four (104) 24-hour reports totaling \$435,945.87 to support one thousand four hundred sixty-five (1,465) independent expenditures. RR 16L-18 concerned the failure to timely file nineteen (19) 24-hour reports totaling \$155,455.08 to support thirty-three (33) independent expenditures and four (4) 48-hour reports totaling \$27,106.62 to support one hundred fifty-nine (159) independent expenditures.

On October 11, 2017, the Commission found reason to believe that the Committee and Elizabeth Shuler in her official capacity as treasurer, violated 52 U.S.C. §30104(g)(1), a provision of the Act, and 11 C.F.R. § 104.4(b) and (c). The Factual and Legal Analysis, which formed a basis for the Commission's finding, is enclosed for your information.

We have also enclosed a brief description of the Commission's procedures for handling possible violations of the Act. In addition, please note that you have a legal obligation to

preserve all documents, records and materials relating to this matter until such time as you are notified that the Commission has closed its file in this matter. *See* 18 U.S.C. § 1519. This matter will remain confidential in accordance with 52 U.S.C. § 30109(a)(4)(B) and 30109(a)(12)(A) unless you notify the Commission in writing that you wish the matter to be made public. Please be advised that, although the Commission cannot disclose information regarding an investigation to the public, it may share information on a confidential basis with other law enforcement agencies.¹

In order to expedite the resolution of this matter, the Commission has authorized the Office of the General Counsel to enter into negotiations directed towards reaching a conciliation agreement in settlement of this matter prior to a finding of probable cause to believe. Pre-probable cause conciliation is not mandated by the Act or the Commission's regulations, but is a voluntary step in the enforcement process that the Commission is offering to you as a way to resolve this matter at an early stage and without the need for briefing the issue of whether or not the Commission should find probable cause to believe that you violated the law.

Please note that you have a legal obligation to preserve all documents, records and materials relating to this matter until such time as you are notified that the Commission has closed its file in this matter. *See* 18 U.S.C. § 1519.

If you are interested in engaging in pre-probable cause conciliation, please contact Kimberly Hart, the attorney assigned to this matter, at (202) 694-1618, (800) 424-9530, or khart@fec.gov within seven days of receipt of this letter. During conciliation, you may submit any factual or legal materials that you believe are relevant to the resolution of this matter. Because the Commission only enters into pre-probable cause conciliation in matters that it believes have a reasonable opportunity for settlement, we may proceed to the next step in the enforcement process if a mutually acceptable conciliation agreement cannot be reached within

¹ The Commission has the statutory authority to refer knowing and willful violations of the Act to the Department of Justice for potential criminal prosecution, 52 U.S.C. § 30109(a)(5)(C), and to report information regarding violations of law not within its jurisdiction to appropriate law enforcement authorities. *Id.* § 30107(a)(9).

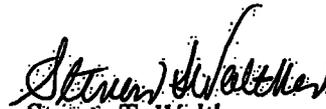
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sixty days. *See* 52 U.S.C. § 30109(a), 11 C.F.R. Part 111 (Subpart A). Conversely, if you are not interested in pre-probable cause conciliation, the Commission may conduct formal discovery in this matter or proceed to the next step in the enforcement process. Please note that once the Commission enters the next step in the enforcement process, it may decline to engage in further settlement discussions until after making a probable cause finding.

Pre-probable cause conciliation, extensions of time, and other enforcement procedures and options are discussed more comprehensively in the Commission's "Guidebook for Complainants and Respondents on the FEC Enforcement Process," which is available on the Commission's website at http://www.fec.gov/em/respondent_guide.pdf.

We look forward to your response.

On behalf of the Commission,


Steven T. Walther
Chairman

Enclosures
Factual and Legal Analysis
Conciliation Agreement
Commission Procedures

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FEDERAL ELECTION COMMISSION

FACTUAL AND LEGAL ANALYSIS

MUR 7285

RESPONDENTS:

Workers' Voice and
Elizabeth Shuler, in her official
capacity as treasurer

I. INTRODUCTION.

This matter was generated based on information ascertained by the Federal Election Commission (the "Commission") in the normal course of carrying out its supervisory responsibilities, pursuant to 52 U.S.C. § 30109(a)(2). The Reports Analysis Division ("RAD") referred Workers' Voice ("WV" or "the Committee") to the Office of General Counsel ("OGC") for failing to timely file 24- and 48-hour Reports of Independent Expenditures ("IEs") totaling \$527,990.11 made shortly before the 2012 election and \$182,561.70 made shortly before the 2014 election.¹

A large portion of these referred IEs were made in connection with door-to-door canvassing (and, to a lesser extent, telephone banking) activities organized by the Committee but carried out by individuals who were employed by and paid by other organizations for the time they spent working for the Committee.² The paid time and associated expenses of employed individuals were provided to, and reported by, WV as in-kind contributions from numerous federal political committees, non-federal political

¹ Amended RAD Referral (RR 14L-34), Workers' Voice (August 9, 2016) ("Amended 14L-34 Referral"); RAD Referral (RR 16L-18), Workers' Voice (Oct. 27, 2016) ("16L-18 Referral").

² See Workers' Voice, Original Response at 2-3 (Jan. 15, 2015) ("14L-34 Orig. Resp."); Workers' Voice, Resp, at 2 (Dec. 19, 2016) ("16L-18 Resp.>").

1 organizations and labor unions.³ A smaller portion of the referred IEs were made with
2 WV's own disbursements (*i.e.*, they were not in-kind contributions).

3 WV acknowledged that it did not file 24- and 48-hour reports for the in-kind
4 contributions made to further IEs, but argued that 24- and 48-hour disclosure reports are
5 not required for those IEs.⁴ With regard to the remaining missing 24- and 48-hour reports
6 identified in the referrals, WV argued that they constitute a small percentage of its total
7 IE activity during the 2012 and 2014 election cycles, and that the missing reports were
8 attributable to a lack of timely data from vendors and in-kind contributors.⁵ The
9 available information appears to support WV's assertion that \$22,987.50 of the monetary
10 IEs referred in 14L-34 were timely reported.⁶ However, WV's arguments that it was not
11 responsible for late filed reports attributable to its lack of timely data, and that IEs made
12 with in-kind resources did not require 24- and 48-hour disclosure reports, are
13 unsupported by the Act, Commission regulations, and precedent.

14 For the reasons set forth below, the Commission found reason to believe that WV
15 and Elizabeth Shuler in her official capacity as treasurer violated 52 U.S.C. § 30104(g)(1)
16 and 11 C.F.R. § 104.4(b) and (c) by failing to timely file IE reports.

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³ 14L-34 Orig. Resp. at 2-3; 16L-18 Resp. at 2-4.

⁴ 14L-34 Orig. Resp. at 5; 16L-18 Resp. at 3-4. WV asserts that it filed 24- and 48-hour reports for \$24,247.50 of the IEs that it made through its own disbursements.

⁵ 14L-34 Orig. Resp. at 2-3.; 16L-18 Resp. at 5.

⁶ As discussed below, the available information does not appear to support WV's assertion that the remaining \$1,260 of allegedly timely monetary IEs (those referred in 16L-18) were timely reported.

1 **II. FACTUAL BACKGROUND**

2 Worker's Voice is a federal non-connected independent expenditure-only political
3 committee controlled and administered by the AFL-CIO national labor federation.⁷

4 During the 2012 and 2014 election cycles, WV made millions of dollars of IEs. This

5 Factual and Legal Analysis addresses two separate RAD referrals relating to WV's

6 reporting of its IEs in 2012 and 2014. The largest portion of the IEs referred

7 (\$427,957.69 in 2012 and \$18,008.50 in 2014) were in-kind contributions made in

8 connection with a door-to-door canvassing project organized by WV, but carried out by

9 individuals whose time was paid for by their own employers.⁸ A smaller portion of the

10 IEs referred (\$100,032.42 in 2012 and \$164,553.20 in 2014) were made through WV's

11 own disbursements.⁹

12 For those IEs made utilizing the donated labor, WV properly reported the in-kind

13 receipts and disbursements on Schedules A and E, respectively, of its regularly scheduled

14 disclosure reports (*e.g.*, quarterly, pre-general, and post general reports) for the 2012 and

15 2014 election cycles. Similarly, for its own IE disbursements, WV properly reported

16 them on the Schedule E of its regularly scheduled disclosure reports. However, for both

17 its own IE disbursements and in-kind IEs, WV did not file all of the required 24- and 48-

18 hour reports associated with the IEs it reported on Schedule E of its regularly scheduled

19 reports. The missing 24- and 48-hour reports are the subject of the referrals.

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7 14L-34 Orig. Resp. at 2.

8 *Id.* at 1.

9 *Id.* at 3, 16L-18 Resp. at 5.

1

2 **A. RR 14L-34**

3 RAD Referral 14L-34 noted the failure of WV to file 24- and 48-hour reports
4 totaling \$527,990.11 for 1,922 IEs as disclosed on its Amended October 2012 Quarterly,
5 2012 Pre-General, and 2012 Post-General Reports. A summary of those reports covered
6 by the referral is set forth below.¹⁰

Report	Number of Missing 24/48 hour reports	Number of IEs	Amount in Violation
2012 October Quarterly	14	457	\$92,044.23
2012 12 Day Pre-General	94	1,444	\$400,555.82
2012 30 Day Post General	10	21	\$35,390.06
Total	118	1,922	\$527,990.11

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8 WV, in its initial response, acknowledged that it failed to file timely 24- and 48-
9 hour reports for (\$427,957.69) of in-kind IEs identified in this referral but offered an
10 explanation for its late filings and requested that the matter be handled by ADRO.¹¹
11 According to WV, it made a concerted effort to timely file its 48-hour reports during the
12 2012 general election period until it realized that the untimely receipt of information from
13 the in-kind contributors necessitated the filing of numerous of amended 48-hour reports.¹²
14 At that point, WV appears to have made a conscious decision to not continue to file
15 amended 48-hour reports during the 2012 election cycle once it deemed the process to be

¹⁰ A detailed chart of the untimely filed 24- and 48-hour reports can be found in the referral. All of the missing 24- and 48-hour reports for the referral are in support of or opposition to federal candidates.

¹¹ 14L-34 Orig. Resp. at 1. WV asserted that because of the complexity of its multi-state voter contact program, accurate information sometimes was received too late to file timely 24-hour or 48-hour reports. *Id.*

¹² *Id.* at 4

1 "overwhelming and inefficient" due to its delayed receipt of the necessary information
2 from contributors.¹³

3 WV also asserted that there is no clear legal guidance for reporting IEs made with
4 in-kind contributions.¹⁴ WV noted that Commission regulations require that an in-kind
5 contribution received also "shall be reported as an expenditure" on the appropriate
6 schedule but asserted that the Commission's public guidance has interpreted this to
7 require that disbursements for in-kind contributions be reported as operating expenditures
8 on Schedule B, not Schedule E, of a committee's regularly scheduled reports.¹⁵
9 Accordingly, WV maintained that the Commission cannot pursue an enforcement action
10 against WV for not reporting the in-kind contributions used for independent expenditures
11 on Schedule E 24- and 48-hour reports.¹⁶ WV argued that despite the fact that it did not
12 actually rely upon the "Commission's interpretive rule" by filing its in-kind IE
13 expenditures on Schedule B, the Commission "cannot enforce compliance with a
14 reporting standard that did not then – and still doesn't – exist."¹⁷

15 With regard to the \$100,032.42 of referred IEs that were direct disbursements by
16 WV (as opposed to in-kind contributions), WV acknowledged that it untimely reported

¹³ *Id.*

¹⁴ *Id.* at 4-5; *see also* Suppl. Resp. at 2-4. WV asserted that there is no provision of the Act that directly addresses reporting obligations for in-kind contributions used to make IEs and little in the Commission's regulations and other sources of information about the ways to account for and report in-kind contributions used to make independent expenditures. Suppl. Resp. at 4.

¹⁵ Suppl. Resp. at 6 (citing 11 C.F.R. § 104.13(a)(2)); *see also Campaign Guide for Nonconnected Committees* ("Campaign Guide") at 58.

¹⁶ Suppl. Resp. at 4.

¹⁷ 14L-34 Orig. Resp. at 5.

1 \$77,044.92, but attributed the late filing to various types of vendor error.¹⁸ WV
2 maintained, however, that it timely reported the remaining amount (\$22,987.50) which
3 related to door hangers and telephone calls made by two of its vendors, Mission Control
4 and NGP VAN.¹⁹ WV stated that a typographical error mistakenly listed the date of the
5 Mission Control disbursement as October 11, 2012, rather than October 15, 2012, which
6 made the report appear late.²⁰ WV stated that a similar error listed the NGP VAN calls as
7 occurring on October 3, 2012, rather than October 11, 2012.²¹

8 **B. RR 16L-18**

9 The 16L-18 Referral noted the failure of WV to timely file 24- and 48-hour
10 reports totaling \$182,561.70 for 192 IEs as disclosed on its Amended 2014 30 Day Post-
11 General and 2014 October Quarterly Reports. A summary of those reports covered by
12 the referral is set forth below.²²

Report	Number of missing 24- and 48-hour reports	Number of IEs	Amount in Violation
2014 October Quarterly	4	159	\$27,106.62
2014 30 Day Post-General	19	33	\$155,455.08
Totals	23	192	\$182,561.70

13
14 With regard to \$18,008.50 of in-kind IEs identified in this referral, WV made the
15 same arguments that it did in 14L-34, namely that it was not required to file 24- and 48-

¹⁸ *Id.* at 7-9.

¹⁹ *Id.* at 7-8.

²⁰ *Id.* at 7.

²¹ *Id.* at 8.

²² A detailed chart of the untimely filed 24- and 48-hour reports can be found in the RR 16L-18. All of the missing 24- and 48-hour reports for the referral are in support of or opposition to federal candidates.

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1 hour reports for in-kind expenditures because Commission guidance suggested reporting
2 the in-kind disbursements as operating expenditures on Schedule B rather than
3 independent expenditures.²³

4 With regard to the \$164,533.20 of referred IEs that were direct disbursements,
5 WV acknowledged that \$163,273.20 of IEs made through its own disbursement were
6 reported late.²⁴ But, WV asserted that \$1,260 of IEs relating to a vendor named Mosaic
7 were timely reported.²⁵ According to WV, of the \$1,260 in payments to Mosaic, one
8 \$270 payment inadvertently listed the dissemination date of October 19, 2014, rather than
9 October 16, 2014, for fliers in support of Joe Garcia.²⁶ Since the \$270 payment was
10 reported on October 17, 2014, WV asserted that it was timely reported.²⁷ As to the
11 remaining \$990 of the \$1,260 in Mosaic payments, WV contended that due to a vendor
12 system flaw, the Schedule E dates for "Date of Public Distribution/Dissemination" and
13 "Date of Disbursement or Obligation" were reversed, resulting in an entry that appeared
14 to be late but was not late.²⁸

15 **III. ANALYSIS**

16 The Act requires committee treasurers to file reports of receipts and
17 disbursements in accordance with the provisions of 52 U.S.C § 30104(b).²⁹ This

23 See 16L-18 Resp. at 1.

24 *Id.* at 5.

25 *Id.*

26 *Id.*

27 *Id.*

28 *Id.*

29 52 U.S.C. § 30104(a)(1).

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1 requirement includes reporting contributions received and independent expenditures
2 made by political committees other than authorized committees.³⁰ Further, political
3 committees that make or contract to make independent expenditures at any time during a
4 calendar year – up to and including the 20th day before an election – must disclose the
5 activity within 48 hours each time that the expenditure aggregates \$10,000 or more.³¹
6 Political committees that make independent expenditures aggregating \$1,000 or more
7 with respect to a given election after the 20th day, but more than 24 hours, before the date
8 of that election, must disclose them within 24 hours following the date of
9 dissemination.³² In addition, political committees must file additional reports within 24
10 hours after each time they make or contract to make independent expenditures
11 aggregating an additional \$1,000.³³

12 Thus, WV had more than one reporting obligation with respect to disbursements
13 (including those corresponding to in-kind contributions used) to make independent
14 expenditures: regularly scheduled reporting and timely 24- and 48-hour IE reporting.
15 WV appears to have fulfilled the first of these obligations, including when it reported the
16 receipt of relevant in-kind contributions used in making IEs on Schedule A and
17 corresponding disbursements on Schedule E of its 2012 and 2014 regularly scheduled

³⁰ 52 U.S.C. §§ 30104(b)(2)(A), (4)(H)(iii); 11 C.F.R. §§ 104.3(a)(2)(i), (b)(1)(vii), 104.4(a).

³¹ 52 U.S.C. § 30104(g); 11 C.F.R. § 104.4(b).

³² 52 U.S.C. § 30104(g)(1); 11 C.F.R. § 104.4(c).

³³ 11 C.F.R. § 104.4(c).

1 reports.³⁴ WV did not, however, meet its second reporting obligation: timely 24- and 48-
2 hour IE reporting.

3 Although WV contended that it failed to file the necessary 24- and 48-hour
4 reports because vendors and in-kind contributors failed to provide timely data,³⁵ The
5 Commission has not considered vendor error to be a valid exculpatory or mitigating
6 factor in similar situations.³⁶

7 Furthermore, WV's argument that the Commission's reporting guidance excuses
8 it from filing 24- and 48-hour reports is unpersuasive. The Campaign Guide guidance
9 cited by WV, which states that offsetting disbursements for in-kind contributions must be
10 reported as operating expenditures on Schedule B, addresses only a committee's regularly
11 scheduled reporting obligations for certain in-kind contributions, not its 24- and 48-hour
12 IE reporting obligations.³⁷ Even assuming, *arguendo*, that WV is correct that the
13 Commission has instructed committees to report all offsetting disbursements for in-kind
14 receipts used in making IEs on Schedule B instead of Schedule E on their regularly
15 scheduled reports, WV fails to explain why such regularly scheduled reporting guidance
16 should or does excuse WV from its separate 24- and 48-hour reporting obligations. As
17 discussed above, the statute and regulations impose two reporting obligations on

³⁴ See 11 C.F.R. § 104.13 (providing that in-kind contributions received also shall be reported as expenditures on the appropriate schedule).

³⁵ See, e.g., 14L-34 Responses; 16L-18 Resp. at 3.

³⁶ See, e.g., MUR 6568 (Heath Shuler for Congress) (finding that Committee failed to report disbursements caused by vendor's error) and MUR 6300 (Republican Party of Virginia) (finding RPV responsible for its vendor's failure to timely forward contributions and RPV's consequential reporting errors). The Commission has, however, taken vendor error into account as a mitigating factor in other types of cases, such as cases involving disclaimer violations. See, e.g., MUR 6125 (McClintock for Congress) (robocall disclaimer violation dismissed due to possible vendor error, among other factors).

³⁷ See Campaign Guide at 58.

1 committees making IEs: on 24- and 48-reports and, later, on regularly scheduled reports.
2 On the issue of 24- and 48-hour reports, the Campaign Guide, the Act, and Commission
3 regulations are clear: committees making IEs over the specified aggregated amounts
4 must file the appropriate 24- and 48-hour reports.³⁸

5 Moreover, even for purposes of regularly scheduled reporting, the Campaign
6 Guide's guidance that ordinary (*i.e.*, non-IE) offsetting disbursements corresponding to
7 in-kind contributions be reported as operating expenditures does not change the regularly
8 scheduled reporting obligations for in-kind contributions used to make IEs, which the
9 Campaign Guide does not address.³⁹ Indeed, the campaign guide states that it provides
10 guidance on "certain aspects" of the law and is "not intended to replace the law or to
11 change its meaning."⁴⁰ For the "certain aspect" of the law not addressed in the Campaign
12 Guide, *i.e.*, the reporting of in-kind resources used to make IEs, WV's regularly
13 scheduled reports do not evidence its alleged confusion; on its regularly scheduled
14 reports, WV reported the offsetting disbursements for the in-kind receipts of labor used to
15 make the referred IEs on Schedule E, not Schedule B.⁴¹

³⁸ See Campaign Guide at 72-73; see also 52 U.S.C. §§ 30104(g), (g)(1); 11 C.F.R. §§ 104.4(b), (c). There is nothing in the Act, regulations, or campaign guides that would suggest that reporting a certain category of activity on one disclosure form automatically excuses reporting it on another disclosure form. To the contrary, the Campaign Guide states that IEs itemized on Schedule E that are disseminated prior to payment must also be disclosed on Schedule D as a reportable debt. See Campaign Guide at 72. It further provides that IEs that exceed an aggregated amount of \$10,000 must be reported on Schedule E and reported on a 48-hour Report. *Id.*

³⁹ See Campaign Guide at 72 (describing Schedule E reporting of IEs, without mentioning the use of in-kind resources).

⁴⁰ *Id.* at i.

⁴¹ See 14L-34 Orig. Resp. at 5 (acknowledging that WV did not report any of the referred in-kind disbursement offsets on Schedule B of its reports, but rather reported them on Schedule E of its regularly scheduled reports)..

1 Lastly, the Commission address WV's arguments on the timeliness of its
2 reporting for IEs made through its own disbursements as it pertains to the following
3 vendors: Mission Control (2012 activity); NGP Van (2012 activity); and Mosaic (2014
4 activity).⁴² The Commission considered WV's assertions regarding the 2012 Mission
5 Control and 2012 NPG Van IEs and reviewed the relevant disclosure reports. The
6 disclosure reports confirm WV's assertion about the typographical errors. We are
7 satisfied that these were clerical errors and that the Mission Control and NPG Van IEs
8 were timely filed. As for the \$1,260 of the Mosaic invoices that WV asserted were
9 timely reported, the Commission reviewed the Committee's filings and has not been able
10 to locate the specific \$270 Mosaic IE filing that WV claimed was filed on October 17,
11 2014. In addition, the Commission was unable to locate the Mosaic IEs totaling \$990
12 which WV claimed were timely reported due to insufficient information provided by WV
13 in its response.⁴³ Therefore, the Commission concludes that the \$1,260 in Mosaic IEs
14 were not timely filed.

15 Thus, WV did not comply with the Act's reporting requirements when it failed to
16 file 141 24- and 48-hour reports totaling \$687,564.31 of IEs.⁴⁴ The Commission
17 therefore found reason to believe that WV and its treasurer violated 52 U.S.C.
18 § 30104(g)(1) and 11 C.F.R. § 104.4(b) and (c).

⁴² 14L-34 Orig. Resp. at 7-9; 16L-18 Resp. at 5. As to the remaining 2012 and 2014 monetary IEs, WV acknowledged the untimely reporting but provided various explanations for the failure to timely file the IE reports, none of which are sufficient under the Act or Commission regulations to vitiate the reporting violations. See 14L-34 Orig. Resp. at 7-9; 16L-18 Resp. at 5-6. The Commission therefore concluded that WV has failed to meet its reporting obligations with respect to these IEs and is in violation of the Act and Commission regulations.

⁴³ See 2014 Post-General Report.

⁴⁴ This figure reflects the subtraction of \$22,987.50 from the 14L-34 amount in violation, based on our conclusion that the Mission Control (\$15,487.50) and NGP VAN (\$7,500) IEs were timely filed.